

UNITED STATES DISTRICT COURT

for the

Eastern District of Oklahoma

CIV 19 - 187 - JHP

Case No.

(to be filled in by the Clerk's Office)

James Leon Nisbett

Plaintiff(s)

(Write the full name of each plaintiff who is filing this complaint. If the names of all the plaintiffs cannot fit in the space above, please write "see attached" in the space and attach an additional page with the full list of names.)

-v-
State of Oklahoma, Department of Corrections
Joe Albaugh, et al. Linda Cooper, Rick ORR,
Mike Haddox

Defendant(s)

(Write the full name of each defendant who is being sued. If the names of all the defendants cannot fit in the space above, please write "see attached" in the space and attach an additional page with the full list of names. Do not include addresses here.)

FILED

JUN 14 2019

PATRICK KEANEY
Clerk, U.S. District Court

By Deputy Clerk

COMPLAINT FOR VIOLATION OF CIVIL RIGHTS

(Prisoner Complaint)

NOTICE

Federal Rules of Civil Procedure 5.2 addresses the privacy and security concerns resulting from public access to electronic court files. Under this rule, papers filed with the court should *not* contain: an individual's full social security number or full birth date; the full name of a person known to be a minor; or a complete financial account number. A filing may include *only*: the last four digits of a social security number; the year of an individual's birth; a minor's initials; and the last four digits of a financial account number.

Except as noted in this form, plaintiff need not send exhibits, affidavits, grievance or witness statements, or any other materials to the Clerk's Office with this complaint.

In order for your complaint to be filed, it must be accompanied by the filing fee or an application to proceed in forma pauperis.

I. The Parties to This Complaint**A. The Plaintiff(s)**

Provide the information below for each plaintiff named in the complaint. Attach additional pages if needed.

Name

James Nisbett

All other names by which
you have been known:

ID Number

434256

Current Institution

John H. Lilley Correctional Center

Address

407971 Hwy 62 East K-734Boley

City

OK.

State

74029

Zip Code

B. The Defendant(s)

Provide the information below for each defendant named in the complaint, whether the defendant is an individual, a government agency, an organization, or a corporation. Make sure that the defendant(s) listed below are identical to those contained in the above caption. For an individual defendant, include the person's job or title (*if known*) and check whether you are bringing this complaint against them in their individual capacity or official capacity, or both. Attach additional pages if needed.

Defendant No. 1

Name

State of OklahomaJob or Title (*if known*)

Shield Number

Employer

Address

City

State

Zip Code

☐

Individual capacity

☒

Official capacity

Defendant No. 2

Name

Department of CorrectionsJob or Title (*if known*)Joe Albaugh et al. / Director

Shield Number

Employer

Oklahoma Department of Corrections

Address

3400 N. Martin Luther King BlvdOklahoma

City

OK.

State

73111

Zip Code

☐

Individual capacity

☒

Official capacity

Defendant No. 3

Name

Job or Title (if known)

Shield Number

Employer

Address

Linda Cooper
 Records (JLCC)
 Department of Corrections
 J.L.C.C. 407971 Hwy 62 East.
 Boley City OK. 74829
 State Zip Code

☒ Individual capacity ☒ Official capacity

Defendant No. 4

Name

Job or Title (if known)

Shield Number

Employer

Address

Rick Orr
 Unit Manager (JLCC)
 Department of Corrections
 407971 Hwy 62 East Unit 4
 Boley City OK. 74829
 State Zip Code

☒ Individual capacity ☒ Official capacity

II. Basis for Jurisdiction

Under 42 U.S.C. § 1983, you may sue state or local officials for the "deprivation of any rights, privileges, or immunities secured by the Constitution and [federal laws]." Under *Bivens v. Six Unknown Named Agents of Federal Bureau of Narcotics*, 403 U.S. 388 (1971), you may sue federal officials for the violation of certain constitutional rights.

A. Are you bringing suit against (check all that apply):

☐ Federal officials (a *Bivens* claim)

☒ State or local officials (a § 1983 claim)

B. Section 1983 allows claims alleging the "deprivation of any rights, privileges, or immunities secured by the Constitution and [federal laws]." 42 U.S.C. § 1983. If you are suing under section 1983, what federal constitutional or statutory right(s) do you claim is/are being violated by state or local officials?

Ex post facto of 2nd Amendment, Liberty Interests and Due Process, 5th and 14th amendments.

C. Plaintiffs suing under *Bivens* may only recover for the violation of certain constitutional rights. If you are suing under *Bivens*, what constitutional right(s) do you claim is/are being violated by federal officials?

N/A

- D. Section 1983 allows defendants to be found liable only when they have acted "under color of any statute, ordinance, regulation, custom, or usage, of any State or Territory or the District of Columbia." 42 U.S.C. § 1983. If you are suing under section 1983, explain how each defendant acted under color of state or local law. If you are suing under *Bivens*, explain how each defendant acted under color of federal law. Attach additional pages if needed. *Each one of these defendants were notified that the law was being improperly applied and each was committing a crime and or violating the Constitution and my rights. In all circumstances they referred back to the law 57 O.S. 138 and Oklahoma Department of Corrections operating procedures if they answered at all.*

III. Prisoner Status

Indicate whether you are a prisoner or other confined person as follows (check all that apply):

- ☐ Pretrial detainee
- ☐ Civilly committed detainee
- ☐ Immigration detainee
- ☒ Convicted and sentenced state prisoner
- ☐ Convicted and sentenced federal prisoner
- ☐ Other (explain) _____

IV. Statement of Claim

State as briefly as possible the facts of your case. Describe how each defendant was personally involved in the alleged wrongful action, along with the dates and locations of all relevant events. You may wish to include further details such as the names of other persons involved in the events giving rise to your claims. Do not cite any cases or statutes. If more than one claim is asserted, number each claim and write a short and plain statement of each claim in a separate paragraph. Attach additional pages if needed.

- A. If the events giving rise to your claim arose outside an institution, describe where and when they arose. *The events started when I was adjudicated a delinquent child in 1992 and given a disposition and placed in Department of Human Services custody.*
- B. If the events giving rise to your claim arose in an institution, describe where and when they arose. *In 2004 Oklahoma Department of Corrections decided to use this juvenile record to modify my sentence and exempt me from the privileges and rights of liberty. I was never notified or given any opportunity to defend against a sealed record. No due process was accomplished either in the Court or otherwise.*

C. What date and approximate time did the events giving rise to your claim(s) occur?

Aug 8, 2004, — Ongoing.

D. What are the facts underlying your claim(s)? (For example: What happened to you? Who did what?

Was anyone else involved? Who else saw what happened?) I came to prison in 2004 and WAS classified by Sentence administration as having a Juvenile adjudication that excluded me from 15 earned credits per month and various other classification considerations without any hearing or due process. When I finally realized and questioned this application and interpretation fifteen years later I was told take it to court. I was obstructed from courts, my own records, and any resources within Department power.

V. Injuries

If you sustained injuries related to the events alleged above, describe your injuries and state what medical treatment, if any, you required and did or did not receive.

Loss of liberty outside of due process and equal protection considerations. This loss occurred without any incidents of rule violations or disciplinary actions. There was no notification or recourse to address these crimes internally. This and the accumulative extend sentences have led to Mental and emotional damage. I am a mentally disabled person according to the ADA, which makes this even worse.

VI. Relief

State briefly what you want the court to do for you. Make no legal arguments. Do not cite any cases or statutes.

If requesting money damages, include the amounts of any actual damages and/or punitive damages claimed for the acts alleged. Explain the basis for these claims.

I am asking this Honorable court to award Monetary damages in the amount of One hundred dollars per day extended over all incarceration. Punitive damages in the amount of 1 million dollars to be donated to Criminal Reformation Society (a Oklahoma non-profit). An injunction to disallow the use of Juvenile adjudications in any circumstance according to State and federal laws, and/or Declaratory Judgment on what is considered Liberty interests concerning 57 O.S. §138.

VII. Exhaustion of Administrative Remedies Administrative Procedures

The Prison Litigation Reform Act ("PLRA"), 42 U.S.C. § 1997e(a), requires that "[n]o action shall be brought with respect to prison conditions under section 1983 of this title, or any other Federal law, by a prisoner confined in any jail, prison, or other correctional facility until such administrative remedies as are available are exhausted."

Administrative remedies are also known as grievance procedures. Your case may be dismissed if you have not exhausted your administrative remedies.

A. Did your claim(s) arise while you were confined in a jail, prison, or other correctional facility?

☒ Yes

☐ No

If yes, name the jail, prison, or other correctional facility where you were confined at the time of the events giving rise to your claim(s). *Lexington Assessment & Receiving, Jessurun Correctional Center, and John H. Lilley Correctional Center*

B. Does the jail, prison, or other correctional facility where your claim(s) arose have a grievance procedure?

☒ Yes

☐ No

☐ Do not know

C. Does the grievance procedure at the jail, prison, or other correctional facility where your claim(s) arose cover some or all of your claims?

☒ Yes

☐ No

☐ Do not know

If yes, which claim(s)? *yes, the claim of Classification using a Juvenile adjudication which is ex-post facto, Sealed, and inadmissible without due process and procedure.*

- D. Did you file a grievance in the jail, prison, or other correctional facility where your claim(s) arose concerning the facts relating to this complaint?

☒ Yes

☐ No

If no, did you file a grievance about the events described in this complaint at any other jail, prison, or other correctional facility?

☐ Yes

☒ No

- E. If you did file a grievance:

1. Where did you file the grievance? *John H. Litkey Correctional Center.*

2. What did you claim in your grievance? *That Department of Corrections administration has used a Juvenile adjudication unlawfully and Unconstitutionally thereby committing a crime and extending my sentence illegally.*

3. What was the result, if any? *The staff at every level failed to follow their own operating procedures and when they did respond there was an admittance of lack of authority over these issues.*

4. What steps, if any, did you take to appeal that decision? Is the grievance process completed? If not, explain why not. (Describe all efforts to appeal to the highest level of the grievance process.)

I was denied access to the Director based on failure to submit an appeal. There was no response to appeal. The facility director (warden) admitted no authority to answer, so I sent a request to the Director. ARA Denied with still no answer.

F. If you did not file a grievance:

1. If there are any reasons why you did not file a grievance, state them here: *I filed the request of staff which is the preliminary step which was never realized because my grievance to Unit Manager [redacted] was never returned answered to me. after the allotted time I wrote the warden and she agreed with me. Then I asked her boss and was denied. There is no appealable answer.*

2. If you did not file a grievance but you did inform officials of your claim, state who you informed, when and how, and their response, if any: *I informed every staff member both verbally and in written form both informal and formally here at John H. Kelley Correctional Center. I also filed the State lawsuit (CV-2018-274) in which I won a reversal and re-arrest. At present time my sentence is still being extended by 15 days a month illegally and Unconstitutionally.*

G. Please set forth any additional information that is relevant to the exhaustion of your administrative remedies: *It is this Department's standard practice to not follow their own procedures, but hold strictly to the ops when judging our submissions. My signature should be on every submission when I received the response. There is a lot of requests that are in my record, but D.O.C. did not provide the State Court with the entire record.*

(Note: You may attach as exhibits to this complaint any documents related to the exhaustion of your administrative remedies.)

VIII. Previous Lawsuits

The "three strikes rule" bars a prisoner from bringing a civil action or an appeal in federal court without paying the filing fee if that prisoner has "on three or more prior occasions, while incarcerated or detained in any facility, brought an action or appeal in a court of the United States that was dismissed on the grounds that it is frivolous, malicious, or fails to state a claim upon which relief may be granted, unless the prisoner is under imminent danger of serious physical injury." 28 U.S.C. § 1915(g).

To the best of your knowledge, have you had a case dismissed based on this "three strikes rule"?

☐ Yes

☒ No

If yes, state which court dismissed your case, when this occurred, and attach a copy of the order if possible.

N/A

- A. Have you filed other lawsuits in state or federal court dealing with the same facts involved in this action?

☒ Yes

☐ No

- B. If your answer to A is yes, describe each lawsuit by answering questions 1 through 7 below. (If there is more than one lawsuit, describe the additional lawsuits on another page, using the same format.)

1. Parties to the previous lawsuit

Plaintiff(s) James Nisbett

Defendant(s) State of Oklahoma, Department of Correction, Joe Albaugh et al.

2. Court (if federal court, name the district; if state court, name the county and State)

Oklahoma County, Oklahoma

3. Docket or index number

CV-2018-274

4. Name of Judge assigned to your case

Judge Parrish

5. Approximate date of filing lawsuit

2/14/2018

6. Is the case still pending?

☒ Yes

☐ No

If no, give the approximate date of disposition. _____

7. What was the result of the case? (For example: Was the case dismissed? Was judgment entered in your favor? Was the case appealed?)

Case was dismissed in district court I appealed to Civil Court of Appeals and SC-117442 was reversed and remanded for further proceedings.

- C. Have you filed other lawsuits in state or federal court otherwise relating to the conditions of your imprisonment?

☐ Yes☒ No

D. If your answer to C is yes, describe each lawsuit by answering questions 1 through 7 below. *(If there is more than one lawsuit, describe the additional lawsuits on another page, using the same format.)*

1. Parties to the previous lawsuit

Plaintiff(s) _____

Defendant(s) _____

2. Court *(if federal court, name the district; if state court, name the county and State)*

3. Docket or index number

4. Name of Judge assigned to your case

5. Approximate date of filing lawsuit

6. Is the case still pending?

☐ Yes☐ No

If no, give the approximate date of disposition _____

7. What was the result of the case? *(For example: Was the case dismissed? Was judgment entered in your favor? Was the case appealed?)*

IX. Certification and Closing

Under Federal Rule of Civil Procedure 11, by signing below, I certify to the best of my knowledge, information, and belief that this complaint: (1) is not being presented for an improper purpose, such as to harass, cause unnecessary delay, or needlessly increase the cost of litigation; (2) is supported by existing law or by a nonfrivolous argument for extending, modifying, or reversing existing law; (3) the factual contentions have evidentiary support or, if specifically so identified, will likely have evidentiary support after a reasonable opportunity for further investigation or discovery; and (4) the complaint otherwise complies with the requirements of Rule 11.

A. For Parties Without an Attorney

I agree to provide the Clerk's Office with any changes to my address where case-related papers may be served. I understand that my failure to keep a current address on file with the Clerk's Office may result in the dismissal of my case.

Date of signing:

May 23, 2019

Signature of Plaintiff

James Nisbett

Printed Name of Plaintiff

James Nisbett

Prison Identification #

434256

Prison Address

407971 Hwy 62 East K-734Bokky

City

OK.

State

74829

Zip Code

B. For Attorneys

Date of signing:

Signature of Attorney

Printed Name of Attorney

Bar Number

Name of Law Firm

Address

City

State

Zip Code

Telephone Number

E-mail Address

Dan Ross
Administrator
Capital Assets Management



John Budd
Acting Director

May 24, 2019

JAMES Nisbett #434256
John Lilly Correctional Center
407971 HWY 62nd East
Boley, Oklahoma 74829-6600

Re: RM Claim #: 1920025699
Claimant: JAMES NISBETT

Dear Mr. Nisbett:

This letter is sent to confirm the receipt, May 24, 2019, of the claim for compensation you have tendered, asking for damages under the Governmental Tort Claims Act. The identifying claim number is listed above. Please use this number as a reference when calling to inquire about your claim.

Under the provisions of the Act, the State will be afforded up to 90 days from the receipt of your claim by the Attorney Generals' Office to review and evaluate it. The State makes every effort to investigate and respond to claims as quickly as possible. The 90 day expiration date is August 22, 2019, on which date the claim will be deemed denied by operation of law. The right to seek compensation by suit in District Court may be restricted by the limitations period prescribed by law of one hundred eighty (180) days after the denial of the claim.

Sincerely,

Risk Management Department

State of Oklahoma